directly brings about a fraud. The truth is, if the act is one which not only makes the fraud possible for the agent, but also is one on which the purchaser did reasonably rely, the principal should be bound, and only then, in accordance with the doctrine of apparent authority illustrated in *Pickering* v. *Busk*, *supra*. As applied to the facts of this case it is evident that this proposed limitation also leaves the *dictum* of ASHHURST J. too broad.

Other arguments might be urged against this decision, as pointed out in the admirable dissenting opinion of STIRLING, L. J. Thus it would seem that, as the various Factors Acts in England, passed for the express purpose of throwing the loss in cases analagous to the present on parties situated as these plaintiffs were, did not cover this case, it falls within the principle of those cases, where at common law those in the position of these defendants clearly should suffer. *Lamb* v. *Attenborough* (1862) 1 B. & S. 831.

The *dictum* of ASHHURST, J., unless one is willing to impose such limitations upon it as will make it express the doctrine of apparent or ostensible authority remains too broad. If such limitations be imposed, it will be apparent that the *dictum* serves no useful purpose.

DIVERSION OF AN INTERSTATE WATERCOURSE.—The United States Circuit Court of Appeals has recently decided that the State of New York, in the exercise of its power of eminent domain, could not enable the City of New York, even on payment of due compensation, to divert the water of an unnavigable river, having its source in ponds in the State of New York, for general distribution and use in the City of New York, and thereby injure substantially riparian rights in the State of Connecticut, pertaining to a stream to which the river in New York was the principal tributary. *Pine and Muller* v. *The Mayor, etc., of the City of New York*, N. Y. Law Journal, Nov. 20, 1901; reported below (1900), 103 Fed. 337. The defense of the City was that the complainant's property rights taken by the defendant were easements dependent upon servitudes upon land in the State of New York, which servitudes the State of New York might under its own law extinguish, upon making compensation.

Whatever may be decided as to the rights of the riparian owner in a navigable stream (See 1 COLUMBIA LAW REVIEW, 121 and 552), there is no doubt that every proprietor, over whose land a private stream flows, has a natural right that it shall continue to flow to and from his premises in quantity, quality and manner as it is accustomed to flow. 3 Kent Com. 439; *United States* v. *Rio Grande Irrigation Co.* (1899) 174 U. S. 690. This is a property right, for the deprivation of which by the exercise of the power of eminent domain, compensation must be made. Lewis on Eminent Domain, 2nd ed. § 61; *Appeal of Haupt* (Pa. 1889) 17 Atl. 436. It is well settled, however, that the waters of a stream wholly within one State may be diverted to supply a city or village with water, and that an injunction will be denied the riparian owner who is injured thereby, provided due compensation is offered. *Lux* v. *Haggin*

(1886) 69 Cal. 255. It is equally clear that a State cannot acquire, by the exercise of its power of eminent domain, real property situated without its territorial limits. *Holyoke Water Power Co.* v. *Connecticut River Co.* (1884) 52 Conn. 570. It becomes necessary therefore to determine whether the rights of the riparian owner to the natural flow of the water is a right incident to and forming a part of his own land, or whether it is an easement in the lands of all the other riparian owners above and below him.

The great weight of authority supports the decision just reached by the Circuit Court of Appeals. The right is not "an easement since it belongs to the estate of the land owner, through which the water flows, as forming one of the elements of which his estate is composed." 2 Washburn on Real Property, 5th ed. 366–7; Gould on Waters, 395; Angell on Watercourses, § 141; STORY, J., in *Slack* v. *Walcott* (1825) 3 Mason, 517; *Harding* v. *Stamford Water Co.* (1874) 41 Conn. 87; *Scriver* v. *Smith* (1885) 100 N. Y. 471; *Sturr* v. *Beck* (1889) 133 U. S. 541. The right to the usual flow of the stream is oftentimes the most valuable element of riparian property. Lewis on Eminent Domain § 61. It is certainly as much an incident of one's ownership of the land, as is the right to pure air, or to lateral support for the land in its natural state. Washburn on Easements, 215*. The property which is injured by he diversion is the land below the place of the diversion. By taking away the water rights, the riparian owner is deprived of the beneficial enjoyment of his own land. In *St. Helena Water Co.* v. *Forbes* (1882) 62 Cal. 182 the plaintiff brought an action to condemn the waters of the creek on which the defendant was a riparian proprietor. The Court held that by taking the water which, in its natural channel, ran over the defendant's lands, the plaintiff took an easement *in the lands of the defendant*, rejecting, on the other hand, the theory that the defendant relinquished an easement in the land above. In like manner in the principal case the State of New York was attempting to compel the plaintiffs, who are riparian proprietors in Connecticut, to sell to the defendant an easement in that Connecticut land; and this as the Court points out, the State cannot do.

This same question arose in 1894 in Massachusetts, when a movement was initiated to take water from the Nashua River for the supply of the inhabitants of Boston. The Nashua River rises in Massachusetts and flows thence into New Hampshire. The owners on the river in New Hampshire, apprehending injury in case the proposed diversion were effected, obtained from counsel an opinion, which was emphatically against the power of the State, even under the act of the Massachusetts legislature, to divert the river. The opinion was printed in 8 Harvard Law Review, 138, and apparently had great influence with the Court in the principal case.